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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 97-106  
Table of Allotments, ) RM-9044  
FM Broadcast Stations. )  
(Cheyenne, Wyoming and )  
Gering, Nebraska) )

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: March 19, 1997;

Released: March 28, 1997

Comment Date: May 19, 1997

Reply Comment Date: June 3, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by TSB II, Inc. ("petitioner"), proposing the allotment of Channel 280C2 at Cheyenne, Wyoming, as the community's potential seventh local FM transmission service. To accommodate the allotment, petitioner also proposes the substitution of Channel 239C3 for Channel 280C3 at Gering, Nebraska, and the modification of Station KOLT-FM's license accordingly. Petitioner states its intention to apply for the channel, if allotted.

2. We believe the proposal warrants consideration since it could provide Cheyenne, Wyoming, with potentially its seventh local FM transmission service. An engineering analysis has determined that Channel 280C2 can be allotted to Cheyenne in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.6 kilometers (0.4 miles) east to avoid a short-spacing to the licensed site of Station KKNG(FM), Channel 283C3, Laramie, Wyoming.<sup>1</sup> Additionally, Channel 239C3 can be allotted to Gering, Nebraska, in compliance with the Commission's minimum distance separation requirements at Station KOLT-FM's presently licensed site.<sup>2</sup>

<sup>1</sup>The coordinates for Channel 280C2 at Cheyenne are North Latitude 41-08-17 and West Longitude 104-48-22.

<sup>2</sup>The coordinates for Channel 239C3 at Gering are North Latitude 41-51-50 and West Longitude 103-42-20.

3. We shall direct an Order to Show Cause to Tracy Broadcasting Corporation, licensee of Station KOLT-FM at Gering, Nebraska, as to why its license should not be modified to specify operation on Channel 239C3 in lieu of Channel 280C3.

4. Whenever an existing licensee or permittee is ordered to change frequency to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred. See Circleville, Ohio, 8 FCC 2d 159 (1967). Petitioner has stated its willingness to reimburse the licensee of Station KOLT-FM for reasonable costs associated with moving to Channel 239C3.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Cheyenne, Wyoming	250C1, 260A, 264C1, 285A, 292C3	229A, <sup>3</sup> 250C1, 260A 264C1, 280C2, 285A, 292C3,
Gering, Nebraska	280C3	239C3

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Tracy Broadcasting Corporation, licensee of Station KOLT-FM, Gering Nebraska, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 239C3 in lieu of Channel 280C3.

7. Pursuant to Section 1.87 of the Commission's Rules, Tracy Broadcasting Corporation, may, not later than May 19, 1997, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Tracy Broadcasting Corporation, to furnish additional information. If Tracy Broadcasting Corporation, raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the

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<sup>3</sup>A Notice of Proposed Rule Making was adopted on November 29, 1996, proposing the allotment of Channel 229A at Cheyenne as the community's sixth local FM transmission service. See 11 FCC Rcd \_\_\_\_ (released December 6, 1996); 61 FR 65509, December 13, 1996.

modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Tracy Broadcasting Corporation, will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the following:

Tracy Broadcasting Corporation  
P.O. Box 532  
Scottsbluff, Nebraska 69363  
(License of Station KOLT-FM)

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before May 19, 1997, and reply comments on or before June 3, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Elizabeth A. Sims  
Irwin, Campbell & Tennenwald, P.C.  
1730 Rhode Island Ave., N.W.  
Suite 200  
Washington, D.C. 20036-3101  
(Counsel for Petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule

making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No.  
RM-9044

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making and Order to Show Cause to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making and Order to Show Cause to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply

comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.